IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (W) NO.907/2006

Mukesh Chopra
Vs.
J.B. Modi & Bros. & Ors.

Date of Judgment :: 17-01-2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Man Singh for the appellant.
Shri Mahendra Singh for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL)

This special appeal is directed against the order of the learned Single Judge dated 3.4.2006 in S.B. Civil Writ Petition no.4635/1992 setting aside the award of the Labour Court, Kota under which the appellant was held entitled to reinstatement with all consequential benefits including back wages, and thus allowing the writ petition of the respondent.

The appellant was in the employment of the respondent-Company, namely, J.B. Modi &

Brothers as a Medical representative from 2.2.1976. A charge-sheet was issued to him on 20.3.1982. In the enquiry which followed, he was held guilty of the charges. Finally, on 10.12.1982, his services were terminated. The appellant approached the Conciliation Officer, Kota raising dispute about termination of his services. The Conciliation Officer submitted failure report. On 15.11.1993, the Government of Rajasthan referred the dispute for adjudication to the Labour Court, Kota in the following terms -

> "Whether the contention of the employer, M/s JB Modi & Bros, Bombay, that Shri M.K. Chopra, Sales Representative, is not a workman covered by section 2(S) of the Industrial Disputes Act, 1947 ?
>
> Whether under the service conditions of the said establishment a dispute can be raised in Bombay only, is tenable ?
>
> If the above said contention of the employer is not tenable, whether the termination of Shri M.K. Chopra, Sales Representative, is justified and legal ?
>
> If not, what relief he is entitled to?"

By an interim award dated 21.3.1986, the Labour Court held that appellant was a workman as defined under section 2(S) of the Industrial Disputes Act and that the reference was competent. Review application against the interim award was rejected and, finally, by the impugned award, the appellant was held entitled to reinstatement with

all consequential benefits including back wages, as mentioned above.

Relying on decisions of the Supreme Court in Management of M/s May and Baker Vs. Their Workmen, AIR 1967 SC 678 and HR Adyanthaya and others Vs. Sandoz (India) Ltd. & Ors., (1994) 5 SCC 737, the learned Single Judge held that the appellant being a medical representative was not a 'workman', and he was not entitled to any relief. However while setting aside the award of the labour court, the learned Single Judge observed that the writ petition had remained pending for 13 years and 50% of the back wages had been paid to him, and further, wages in terms of Section 17-B of the Industrial Disputes Act had also been paid to him, the recovery of the amount already paid would not be justified. The learned Single Judge accordingly directed that the respondent would not recover the amount already paid to the appellant. Not satisfied, the appellant has come to the Division Bench in this appeal.

Two questions broadly arise for consideration – (i) whether 'sales promotion employees', commonly known as medical representatives can be called 'workman' for the

purpose of the Industrial Disputes Act; and (ii) whether the appellant was entitled to the relief granted by the Labour Court ?

In M/s May and Baker (supra), persons engaged in sales promotion were held to be not covered by the definition of 'workman' under the Industrial Disputes Act (in short, 'the ID Act'). The Federation of Medical Representatives' Association of India approached the Petitions Committee of the Rajya Sabha to suitably amend the ID Act so as to extend the protective umbrella of the Act to sales promotion employees. The Petitions Committee vide its report dated 14.3.1972 came to the conclusion that amendment of the definition of the term 'workman' in the ID Act may not fully serve the interest of the medical representatives. The Committee felt that a separate legislation may be enacted for the sales promotion employees. The Sales Promotion Employees (Conditions of Service) Act, 1976 (in short, 'the SPE Act') was accordingly enacted to regulate certain conditions of service of the sales promotion employees in certain establishments.

Section 6 of the SPE Act makes several labour enactments, namely, the Workmen's Compensation

Act, Industrial Disputes Act, Minimum Wages Act, Maternity Benefit Act, Payment of Bonus Act and Payment of Gratuity Act applicable to sales promotion employees. Sub-section (2) thereof which refers to the ID Act may be quoted as under :-

> "(2) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act and for the purpose of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute".

After noticing these provisions and the Statement of Objects and Reasons of the SPE Act, the Supreme Court in HR Adyanthaya Vs. Sandoz (India) Ltd., (1994) 5 SCC 737 observed as follows -

> ". . . . on and from 6.3.1976 the provisions of the ID Act became applicable to the medical representatives depending upon their wages up to 6.5.1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged."

It is relevant to mention here that by Act No.46 of 1982, several amendments were made in the ID Act. Sub-section (2) of Section 6 was also

omitted by Section 24 of the Amendment Act. However it is not in dispute that Section 24 of the Amendment Act was not brought into force, and Section 6(2) of the SPE Act therefore continued to hold the field. Reference in this connection may be made to a decision of the Punjab & Haryana High Court in Ripu Daman Bhanot Vs. The Presiding Officer, Labour Court, Ludhiana & Ors., (1997) 1 LLJ 155.

From a reading of sub-section (2) of Section 6 it is manifest that the provisions of the ID Act, as in force for the time being apply to sales promotion employees as they apply to 'workman' within the meaning of the ID Act, and for the purposes of any proceeding under the ID Act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched or whose dismissal, discharge or retrenchment had led to that dispute.

Thus it is evident that sales promotion employees are deemed to be workman for the purpose of the ID Act. The finding of the learned Single Judge holding that the respondent was not a workman within the meaning of that Act therefore

cannot be said to be in accordance with law. However, notwithstanding our favourable conclusion, the appellant does not qualify for the relief which was granted to him by the Labour Court. Sub-section (2) of Section 6 has to be read along with and subject to the definition of the term 'sales promotion employee' in Section 2(d). The definition as it stood at the relevant time was as under :-

> ""Sales promotion employees" means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, and -
>
> (i) who draws wages (being wages not including any commission) not exceeding seven hundred and fifty rupees per mensem; or
>
> (ii) who had drawn wages (being wages, including commission) or commission only, in either case, not exceeding nine thousand rupees in the aggregate in the twelve months immediately preceding the months in which this Act applies to such establishment and continues to draw such wages or commission in the aggregate, not exceeding the amount aforesaid in a year, but does not include any such person who is employed or engaged mainly in a managerial or administrative capacity."

It may not be out of place to mention here that the definition of 'sales promotion employees' in section 2(d) was amended by Act 48

of 1986 with effect from 6.5.1987. However, as the appellant's services were terminated on 10.12.1982, that is, prior to the amendment, his case would be governed by definition as it stood at the relevant time as quoted hereinabove.

The question for consideration is whether the appellant can be called “sales promotion employee” within the meaning of Section 2(d) so as to claim the protection of Section 6(2) of the Act. It is manifest that in order to clarify as sales promotion employee, the person must not be drawing wages exceeding seven hundred and fifty rupees per mensem (excluding commission) or a sum of rupees nine thousand in the aggregate (including commission) in the twelve months immediately preceding the month of application of the Act to the establishment. It is not in dispute that the remuneration of the appellant during the relevant period exceeded the limit of Rs.9000/-. That being the position, it would follow, he was not entitled to the protection of the ID Act by invoking sub-section (2) of Section 6 of the SPE Act. Counsel tried to wriggle out but in view of the decision in H.R. Adyantha Vs. Sandoz (India) Ltd. (supra) in which categorisation on the basis of income has been upheld, there is no scope for

taking any other view.

Counsel drew our attention to Section 11A of the Act and submitted that the provisions of the ID Act being more favourable, the appellant is entitled to protection of the said Act. The submission is totally misconceived for the simple reason that the benefit envisaged in Section 11A can be claimed only by a person who is 'sales promotion employee' within the meaning of Section 2(d) of the Act. In view of our conclusion that the appellant does not qualify as sales promotion employee because his remuneration exceeded Rs.9000/-, he obviously cannot claim the benefit of Section 11A.

In the result, while upholding the order of the learned Single Judge though for different reason, we dismiss the appeal without any order as to costs.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-